

No. 48474-9-II

THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

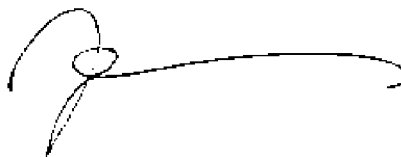
DARREN CARMEN,

Appellant.

Appeal from the Superior Court of Washington for Lewis County

Respondent's Brief

JONATHAN L. MEYER
Lewis County Prosecuting Attorney



By:

JESSICA L. BLYE, WSBA No. 43759
Deputy Prosecuting Attorney

Lewis County Prosecutor's Office
345 W. Main Street, 2nd Floor
Chehalis, WA 98532-1900
(360) 740-1240

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
I. ISSUES.....	1
II. STATEMENT OF THE CASE	1
III. ARGUMENT	5
A. THE STATE PRESENTED SUFFICIENT EVIDENCE FOR A RATIONAL JURY TO FIND CARMEN GUILTY OF ATTEMPTING TO ELUDE PURSUING POLICE VEHICLE.....	5
1. Standard Of Review.....	5
2. The State Proved Each Element Beyond A Reasonable Doubt, As Required, And Therefore Presented Sufficient Evidence To Sustain The Jury's Verdict For Attempting To Elude Pursuing Police Vehicle	6
B. CARMEN WAS NOT CONVICTED USING PROPENSITY EVIDENCE BECAUSE THE TRIAL COURT'S RULING ALLOWING TESTIMONY REGARDING HIS SUSPENDED LICENSE CONVICTION WAS PROPER	11
1. Standard Of Review.....	11
2. The Trial Court Properly Admitted Testimony Regarding Carmen's Suspended License Conviction.....	12
3. If The Trial Court Erred In Admitting The ER 404(b) Evidence, Carmen Cannot Show Prejudice.....	17
IV. CONCLUSION.....	19

TABLE OF AUTHORITIES

Washington Cases

<i>State v. Athan</i> , 160 Wn.2d 354, 158 P.3d 27 (2007)	15
<i>State v. Bourgeois</i> , 133 Wn.2d 389, 945 P.2d 1120 (1997).....	12
<i>State v. Camarillo</i> , 115 Wn.2d 60, 794 P.2d 850 (1990).....	7
<i>State v. C.J.</i> , 148 Wn.2d 672, 63 P.3d 765 (2003)	12
<i>State v. Colquitt</i> , 133 Wn. App. 789, 137 P.3d 893 (2006)	6
<i>State v. Delmarter</i> , 94 Wn.2d 634, 618 P.2d 99 (1980)	6
<i>State v. Finch</i> , 137 Wn.2d 792, 975 P.2d 967 (1999)	12
<i>State v. Goodman</i> , 150 Wn.2d 774, 83 P.2d 410 (2004)	6
<i>State v. Green</i> , 94 Wn.2d 216, 616 P.2d 628 (1980).....	6
<i>State v. Gresham</i> , 173 Wn.2d 405, 269 P.3d 207 (2012)	11, 12
<i>State v. Haga</i> , 13 Wn. App. 630, 536 P.2d 648 (1975).....	15
<i>State v. Matthews</i> , 75 Wn. App. 278, 877 P.2d 252 (1994)	15
<i>State v. Myers</i> , 133 Wn.2d 26, 941 P.2d 1102 (1997)	7
<i>State v. Olinger</i> , 130 Wn. App. 22, 121 P.3d 724 (2005)	7
<i>State v. Powell</i> , 166 Wn.2d 73, 206 P.3d 321 (2009)	13, 17
<i>State v. Salinas</i> , 119 Wn.2d 192, 829 P.2d 1068 (1992)	6
<i>State v. Stenson</i> , 132 Wn.2d 668, 940 P.2d 1239 (1997).....	12, 15
<i>State v. Warren</i> , 165 Wn.2d 17, 195 P.3d 940 (2008)	17
<i>State v. Yarbrough</i> , 151 Wn. App. 66, 210 P.3d 1029 (2009) ..	12, 15

<i>State v. Young</i> , 87 Wn.2d 129, 550 P.2d 1 (1976)	15
---	----

Federal Cases

<i>In re Winship</i> , 397 U.S. 358, 90 S. Ct 1068, 25 L.Ed.2d 368 (1970)	6
---	---

Washington Statutes

RCW 46.61.024(1)	7
------------------------	---

Constitutional Provisions

U.S. Constitution, Amendment XIV § 1	6
--	---

Other Rules or Authorities

ER 404(b)	11, 12, 13, 16, 17, 18
5D Karl B. Tegland, <i>Washington Practice: Courtroom Handbook on Washington Evidence</i> (2015-2016)	13

I. ISSUES

- A. Did the State present sufficient evidence to sustain Carmen's conviction for Attempting to Elude?
- B. Did the Court properly admit 404(b) evidence for the purpose of showing motive?

II. STATEMENT OF THE CASE

On July 9, 2015 at 5:55 p.m., Deputy Rodgers of the Lewis County Sheriff's Office was sitting in his police vehicle at the intersection of Birchfield Parkway and Middle Fork Road in Lewis County, Washington. RP¹ 60-62. Deputy Rodgers had just signed into service for patrol and was completing administrative paperwork. RP 61. Deputy Rodgers was wearing his department-issued uniform and was in his marked police vehicle, which was equipped with lights and a siren. RP 61-62.

While sitting at the intersection, Deputy Rodgers saw a black Chevy pickup cruise by at a high rate of speed, which he estimated to be 70 to 80 miles per hour. RP 63. Deputy Rodgers was able to see the driver and make eye contact with him as he dove past the deputy's location. RP 63.

¹ The State will cite to the transcript of the jury trial, which is in consecutive paginated volumes as RP.

When the vehicle passed his location, Deputy Rodgers saw the vehicle's brake lights come on, the rear end of the vehicle come up, and the front end come down, which the deputy observed as a clear sign of the vehicle stopping at a high rate of speed. RP 64. Deputy Rodgers pulled out immediately to follow the vehicle and try to get a pace of its speed. RP 64. As soon as Deputy Rodgers began to pull out, he saw the vehicle's brake lights go off and the tail end of the truck lower, which indicated the vehicle was accelerating again. RP 65. When Deputy Rodgers observed the vehicle swerve over the center line near Birchfield Access Road, he activated his overhead lights and tried to conduct a traffic stop. RP 66. Deputy Rodgers estimated that at that time, he was between 40 to 50 yards² behind the vehicle. RP 66.

While his lights were activated, Deputy Rodgers maintained a visual of the vehicle for approximately a mile and a half. RP 67. During that time, Deputy Rodgers observed the vehicle drive at a high rate of speed, which he estimated to be 90 to 100 miles per hour. RP 67. He observed the vehicle move into the oncoming lane of travel while driving through an S-curve in the road. RP 67-68. Deputy

² Or 120 to 150 feet.

Rodgers described that area of the road as a blind spot with a 40 mile per hour speed limit. RP 68.

Deputy Rodgers briefly lost visual contact with the vehicle as it went through the curve because he had to slow down to stay in his lane of travel. RP 68. When Deputy Rodgers came up to the intersection with Kruger Road, he observed a large dust cloud, and as he drove through it, he observed a collision scene and Carmen near the stopped vehicle. RP 68-69.

Deputy Rodgers investigated the collision scene and determined that the vehicle left the roadway while trying to make the turn onto Kruger Road and drove into the gravel parking lot of the Onalaska Fire Department. RP 70. The vehicle continued at the bottom of the gravel parking lot, striking a stump and a county sign, and then traveled back onto the roadway. RP 70. During this time, one of the vehicle's tires was sheared off at the axle and left in the roadway. RP 71. The vehicle traveled into the oncoming lane at one point traveling somewhat sideways and then back into its own lane. RP 71-73. The vehicle then went into a driveway and then into an open field where it came to a rest. RP 74.

When Deputy Rogers first approached, he observed Carmen standing outside of the vehicle with his hands reaching into the

driver's side. RP 77. Deputy Rodgers drew his sidearm and approached the vehicle. RP 78. He observed Carmen start moving quickly away from the vehicle, at which point Deputy Rodgers commanded Carmen to cease and show his hands. RP 78. Carmen complied with the command. RP 78. Deputy Rodgers placed Carmen under arrest. RP 78.

Carmen was charged with Attempting to Elude Pursuing Police Vehicle, Driving While License Suspended in the Third Degree, and Operating a Vehicle Without Ignition Interlock. CP 1-5. On the morning of the first day of trial, Carmen pleaded guilty to Driving While License Suspended in the Third Degree and Operating a Vehicle Without Ignition Interlock. CP 53-58; RP 22-27. After the plea, the Court heard Carmen's motion in limine to exclude evidence of the convictions under a 404(b) argument. RP 27-43.

The Court suppressed evidence of the ignition interlock conviction, finding that its probative value was outweighed by the risk of unfair prejudice. RP 43. However, the Court found that evidence regarding the Driving While License Suspended in the Third Degree conviction was probative for showing why Carmen would not stop for the police vehicle. RP 42. The Court stated that the probative value outweighed the risk of prejudice for the purpose of proving motive

and intent. RP 42-43. The Court stated it would, if requested, give a limiting instruction stating that the evidence could be considered for the purpose of showing motivation or intent and nothing else. RP 43. While finalizing jury instructions, the Court accepted an instruction restricting consideration of the Driving While License Suspended in the Third Degree evidence for the limited purpose of showing motive. RP 161-63, 169-71; CP 78.

Carmen was convicted of Attempting to Elude a Pursuing Police Vehicle. CP 63. This appeal follows. CP 99.

The State will supplement the facts as necessary throughout its argument below.

III. ARGUMENT

A. THE STATE PRESENTED SUFFICIENT EVIDENCE FOR A RATIONAL JURY TO FIND CARMEN GUILTY OF ATTEMPTING TO ELUDE PURSUING POLICE VEHICLE.

Carmen argues the State did not present sufficient evidence to sustain the jury's guilty verdict. Brief of Appellant 6-11. The State presented sufficient evidence to sustain the jury's guilty verdict for Attempting to Elude Pursuing Police Vehicle.

1. Standard Of Review.

Sufficiency of evidence is reviewed in the light most favorable to the State to determine if any rational jury could have found all the

essential elements of the crime charged beyond a reasonable doubt.

State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

2. The State Proved Each Element Beyond A Reasonable Doubt, As Required, And Therefore Presented Sufficient Evidence To Sustain The Jury's Verdict For Attempting To Elude Pursuing Police Vehicle.

The State is required under the Due Process Clause to prove all the necessary elements of the crime charged beyond a reasonable doubt. U.S. Const. amend. XIV, § 1; *In re Winship*, 397 U.S. 358, 362-65, 90 S. Ct 1068, 25 L.Ed.2d 368 (1970); *State v. Colquitt*, 133 Wn. App. 789, 796, 137 P.3d 893 (2006). An appellant challenging the sufficiency of evidence presented at a trial “admits the truth of the State’s evidence” and all reasonable inferences therefrom are drawn in favor of the State. *State v. Goodman*, 150 Wn.2d 774, 781, 83 P.2d 410 (2004). When examining the sufficiency of the evidence, circumstantial evidence is just as reliable as direct evidence. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

The role of the reviewing court does not include substituting its judgment for the jury’s by reweighing the credibility or importance of the evidence. *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). The determination of the credibility of a witness or evidence

is solely within the scope of the jury and not subject to review. *State v. Myers*, 133 Wn.2d 26, 38, 941 P.2d 1102 (1997), *citing State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). “The fact finder...is in the best position to evaluate conflicting evidence, witness credibility, and the weight to be assigned to the evidence.” *State v. Olinger*, 130 Wn. App. 22, 26, 121 P.3d 724 (2005) (citations omitted).

To convict Carmen of Attempting to Elude Pursuing Police Vehicle the State was required to prove, beyond a reasonable doubt, that on or about July 9, 2015, Carmen willfully failed or refused to immediately bring the vehicle to a stop after being signaled to do so and drove in a reckless manner. RCW 46.61.024(1); CP 39. The State bears the burden of proving the conduct was willful, i.e., the person acted knowingly or with knowledge. CP 76-77.

Carmen argues there was insufficient evidence to show he was aware of the police vehicle following him and he was willful in failing to stop the vehicle. Brief of Appellant 9-11. Carmen argues that at most the evidence showed Carmen was speeding and up to 800 to 900 feet ahead when the deputy initially entered the roadway. *Id.* at 10.

However, Carmen's argument fails as it is not based on viewing the evidence in the "light most favorable to the State" or drawing all reasonable inferences in the State's favor.

The State presented evidence that Deputy Rodgers activated his lights when he was between 40 to 50 yards behind Carmen and then maintained a visual of the vehicle for approximately a mile and a half until Carmen went through a curve. RP 66-68. Deputy Rodgers observed Carmen increase his speed during that time to approximately 90 to 100 mph. RP 67.

During cross examination, Deputy Rodgers agreed that if a car was traveling at a speed of 70 to 80 mph it would be traveling between 102 to 117 feet per second. RP 99. With regards to how long it took to begin pursuing the vehicle, Deputy Rodgers stated that while he made sure that the roadway was clear to enter, he essentially "gunned it" when he began following Carmen. RP 93-94. Deputy Rodgers provided no specific number of seconds that it took for him to enter the roadway. RP 93-94. Deputy Rodgers agreed it could take between 4 to 5 seconds for his vehicle to get up to Carmen's speed from a stopped position pulling onto the road. RP 95-96. Deputy Rodgers agreed that with the passage of 5 seconds, Carmen would have traveled approximately 500 feet. RP 99-100.

Deputy Rodgers agreed that with an additional few seconds, Carmen could have theoretically traveled up to 800 to 900 feet. RP 100-101.

Carmen argues this testimony means he, as a matter of fact, was up to 800 to 900 feet ahead of the deputy initially and no reasonable juror could conclude from this that Carmen saw the deputy's lights, knew he had to pull over, and willfully failed to do so.

However, the light most favorable to the State does not require taking as fact the underlying assumptions of the defendant's mathematical calculations. The officer did not agree to all of those assumptions, he agreed that with those assumptions, the math was correct. That is conveyed by the officer responding "theoretically, yes" to the proposition that the defendant traveled/gained 800 to 900 feet. RP 102. He was agreeing the defendant's math was correct, in that a vehicle traveling at approximately 102 feet per second would have traveled approximately 800 to 900 feet over the course of 8 to 9 seconds.

Deputy Rodgers originally gave an estimated distance of 40 to 50 yards, later acknowledged this was an approximation, and said that while he did not know the specific distance, he was able to close the gap and got fairly close to Carmen. CP 66, 101-102. Carmen seems to be arguing that the deputy acknowledging his estimation

was, in fact, an estimation conflicted with his initial testimony and should have bearing on whether the State provided sufficient evidence. Brief of Appellant 10. However, such an argument would rely on a presumption that any differences in the Deputy's testimony during direct and cross examination would have resulted in the jury questioning the officer's credibility and accepting the defense's characterization of distance and speed. The jury finding Carmen guilty suggests it found Deputy Rodgers to be a credible witness. Determinations of credibility and weight of evidence is for the jury to decide and this Court should not substitute its judgment for the jury's.

From the evidence presented by the State, a reasonable jury could find that Deputy Rodgers had direct view of Carmen's vehicle for a mile and a half after activating his lights. A jury could reasonably infer that Carmen could also see the flashing lights of Deputy Rodgers's police vehicle for that mile and a half. Furthermore, a reasonable jury could find beyond a reasonable doubt that Carmen willfully failed to stop for the police vehicle when he continued to accelerate away.

Carmen's argument, that he was 800 to 900 feet ahead of the deputy and unlikely to have been aware of the police vehicle, requires viewing evidence and making inferences in his favor, which

is not the proper standard of review. In the light most favorable to the State, the State sufficiently proved, beyond a reasonable doubt, that Carmen was guilty of Attempting to Elude Pursuing Police Vehicle and this Court should affirm his conviction.

B. CARMEN WAS NOT CONVICTED USING PROPENSITY EVIDENCE BECAUSE THE TRIAL COURT’S RULING ALLOWING TESTIMONY REGARDING HIS SUSPENDED LICENSE CONVICTION WAS PROPER.

Carmen argues that the trial court improperly allowed the jury to use propensity evidence to convict him, in violation of ER 404(b). Brief of Appellant 13-15. Carmen asserts the trial court used the wrong legal standard because it admitted the evidence under an ER 404(b) exception which does not apply to his case. *Id.* 14-15. Carmen also argues that even if the exception applied, the probative value of the evidence was outweighed by the prejudicial effect and that any error was not harmless. *Id.* 15-18.

The trial court did not err in admitting testimony regarding Carmen’s suspended license conviction. The court did the proper analysis, and if, *arguendo*, the trial court erred, the admission of the evidence was harmless.

1. Standard Of Review.

“[I]nterpretation of an evidentiary rule is a question of law” subject to de novo review. *State v. Gresham*, 173 Wn.2d 405, 419,

269 P.3d 207 (2012). Once it is determined the trial court correctly interpreted the rule, a determination regarding the admissibility of evidence by the trial court are reviewed under an abuse of discretion standard. *Gresham*, 173 Wn.2d at 419; *State v. Finch*, 137 Wn.2d 792, 810, 975 P.2d 967 (1999) (citations omitted). “A trial court abuses its discretion only when its decision is manifestly unreasonable or is based on untenable reasons or grounds.” *State v. C.J.*, 148 Wn.2d 672, 686, 63 P.3d 765 (2003), *citing State v. Stenson*, 132 Wn.2d 668, 701, 940 P.2d 1239 (1997).

If the trial court’s evidentiary ruling is erroneous, the reviewing court must determine if the erroneous ruling was prejudicial. *State v. Bourgeois*, 133 Wn.2d 389, 403, 945 P.2d 1120 (1997). An error is prejudicial if “within reasonable probabilities, the outcome of the trial would have been materially affected had the error not occurred.” *Bourgeois*, 133 Wn.2d at 403 (citations omitted).

2. The Trial Court Properly Admitted Testimony Regarding Carmen’s Suspended License Conviction.

A party may not admit evidence of other crimes, wrongs, or acts of a person to show action in conformity therewith. *State v. Yarbrough*, 151 Wn. App. 66, 81, 210 P.3d 1029 (2009). The purpose and scope of ER 404(b) is that it “governs the admissibility of

evidence of other crimes or misconduct for purposes other than proof of general character.” 5D Karl B. Tegland, Washington Practice: Courtroom Handbook on Washington Evidence, § 404:6, at 170 (2015-2016). Evidence of other crimes or misconduct is not admissible to demonstrate a defendant’s propensity to commit the crime they are currently charged with. ER 404(b); *State v. Powell*, 166 Wn.2d 73, 81, 206 P.3d 321 (2009). Evidence of other crimes, acts, or wrongs by a person may be admissible for purposes such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. ER 404(b).

Prior to admitting ER 404(b) evidence a trial court must conduct a four part test. *Id.* at 81-82. The trial court must,

(1) find by a preponderance of the evidence that the misconduct occurred, (2) identify the purpose for which the evidence is sought to be introduced, (3) determine whether the evidence is relevant to prove an element of the crime charged, and (4) weigh the probative value against the prejudicial effect.

Id. at 81-82. The reviewing court defers to the trial court regarding the admission of evidence. *Powell*, 166 Wn.2d at 81. This deference acknowledges that the trial court is best suited to determine a piece of evidence’s prejudicial effect. *Id.*

The State sought to admit evidence that on July 9, 2015 Carmen was driving while his license was suspended and without a

required ignition interlock device. RP 31-34. The State argued that Carmen's license and ignition interlock status were relevant to establishing his mental state at the time of driving and why he may have attempted to elude. RP 32. Carmen objected, arguing that there was too great a risk the jury would use the information as evidence of conformity – that if he was already committing two driving offenses, he was probably committing a third as well. RP 36-38. The trial judge in this case ruled that the evidence was relevant for showing motive for why Carmen would not stop as alleged by the state. RP 42. The judge ruled that the probative value of the suspended license conviction outweighed the risk of unfair prejudice but the ignition interlock conviction was more prejudicial than probative. RP 42-43. The judge ruled that the ignition interlock conviction was inadmissible and the suspended license conviction was admissible for the purpose of motive and intent and nothing else. RP 43. During his ruling on the motion, the judge did not explicitly state that he found the act committed by a preponderance of the evidence. RP 42-43. However, just prior to hearing argument on this motion, the judge did find on the record that there was a factual basis to accept Carmen's guilty plea, and the judge found Carmen guilty of driving while license suspended in the third degree. RP 26-27.

Evidence of misconduct or other crimes may be admissible to prove motive when motive is at issue. *State v. Matthews*, 75 Wn. App. 278, 877 P.2d 252 (1994); *State v. Stenson*, 132 Wn.2d 668, 940 P.2d 1239 (1997). It has been well established that the State can prove motive even when it is not an element of the crime charged. See *State v. Yarbrough*, 151 Wn. App. 66, 83-84, 210 P.3d 1029 (2009); *State v. Athan*, 160 Wn.2d 354, 382, 158 P.3d 27 (2007); *State v. Young*, 87 Wn.2d 129, 138, 550 P.2d 1 (1976).

In *State v. Matthews*, the court found that evidence of the defendant's petition for bankruptcy was admissible to show motive for robbery, where the State's theory of the case was an interrupted robbery resulting in murder. 75 Wn. App. at 284. The court held this was a permissible area of inquiry notwithstanding that motive was not an actual element of the crime. 284-85, citing *State v. Haga*, 13 Wn. App. 630, 637, 536 P.2d 648 (1975).

In *State v. Stenson*, the court found evidence of quarrels, ill-feeling, and prior threats may be admissible in a prosecution for murder to show motive and that such evidence "often bears directly upon the state of mind of the accused with consequent bearing upon the question of malice or premeditation." 132 Wn.2d at 702.

The 404(b) admissibility analysis requires the court to identify the purpose for offering the evidence and find that the evidence is relevant to prove an element of the crime. It does not require that the purpose for which the evidence is offered is itself an element of the charge. As case law above establishes, motive does not have to be an element of the crime for in order for motive to be at issue and a relevant area of inquiry.

Here, motive is not itself an element of attempting to elude a police vehicle. However, evidence of motive is notwithstanding a permissible area of inquiry because it's relevant to establish the willfulness of the defendant's actions, which is an element of the charge. That Carmen had a suspended license at the time Deputy Rodgers activated his lights and attempted to conduct a traffic stop is relevant to show a motive for why Carmen may have willfully chosen to continue driving rather than stop, which was the State's theory of the case.

Carmen's argument that his suspended license status was more prejudicial than probative is largely based on the proposition that the evidence had no relevance to the crime charged and therefore no probative value. Brief of Appellant 13-16. As argued above, the evidence has bearing upon Carmen's state of mind at the

time of the incident with consequent bearing upon the question of willfulness. As such, the evidence is relevant and does have probative value.

Carmen argues that his suspended license status was unfairly prejudicial because it tended to show the jury that he was a scofflaw and the type of person who would attempt to flee from the police. Brief of Appellant 16. However, the jury was given a limiting instruction that it could only use this evidence for the purpose of showing motive. CP 78. Juries are presumed to follow the court's instructions. *State v. Warren*, 165 Wn.2d 17, 29, 195 P.3d 940 (2008). This Court should presume that the jury only considered Carmen's license status for its allowed purpose and did not consider it as general evidence of bad character. This Court should also defer to the trial court as being best suited to determine a piece of evidence's prejudicial effect. *Powell*, 166 Wn.2d at 81. Therefore, this Court should find the evidence of Carmen's suspended license status was not more prejudicial than probative and affirm Carmen's conviction.

3. If The Trial Court Erred In Admitting The ER 404(b) Evidence, Carmen Cannot Show Prejudice.

The State maintains the trial court did not err when it admitted the ER 404(b) evidence. Arguendo, if the trial court did err, Carmen

does not make the requisite showing that he was prejudiced by the wrongfully admitted evidence. Carmen must show that, within reasonable probabilities, he would not have been convicted of Attempting to Elude Pursuing Police Vehicle if the trial court had not admitted the erroneous ER 404(b) evidence. Carmen cannot meet this burden.

The overwhelming evidence proved Carmen committed the crime of Attempting to Elude Pursuing Police Vehicle. Take away the DWLS 3 conviction evidence, and the jury would be left with Deputy Rodgers following Carmen for a mile and a half with flashing police vehicle lights, while the deputy was able to maintain a visual of the vehicle. RP 67. Rather than stopping, Carmen increased his speed to 90 to 100 miles per hour, drove through a blind S-curve, and caused a collision. RP 67-69.

Carmen cannot show he was prejudiced by the trial court's alleged erroneous ER 404(b) ruling and his conviction should therefore be affirmed.

//

//

//

//

IV. CONCLUSION

The State presented sufficient evidence to sustain Carmen's conviction for Attempting to Elude Pursuing Police Vehicle. The trial court properly admitted evidence of Carmen's suspended license status, with a limiting instruction, to show motive for attempting to elude. This Court should affirm Carmen's conviction.

RESPECTFULLY submitted this 23rd day of September,
2016.

JONATHAN L. MEYER
Lewis County Prosecuting Attorney

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a horizontal line that curves upwards at the end.

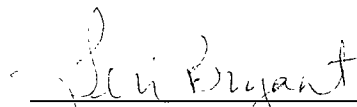
by: _____
JESSICA L. BLYE, WSBA 43759
Attorney for Plaintiff

**COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II**

STATE OF WASHINGTON, Respondent, vs. DARREN CARMEN, Appellant.	No. 48474-9-II DECLARATION OF SERVICE
--	--

Ms. Teri Bryant, paralegal for Jessica L. Blye, Deputy Prosecuting Attorney, declares under penalty of perjury under the laws of the State of Washington that the following is true and correct: On September 23, 2016, the appellant was served with a copy of the **Respondent's Brief** by email via the COA electronic filing portal to Peter Tiller, attorney for appellant, at the following email address: kelder@tillerlaw.com and ptiller@tillerlaw.com.

DATED this 23rd day of September, 2016, at Chehalis, Washington.



Teri Bryant, Paralegal
Lewis County Prosecuting Attorney Office

LEWIS COUNTY PROSECUTOR

September 23, 2016 - 4:50 PM

Transmittal Letter

Document Uploaded: 7-484749-Respondent's Brief.pdf

Case Name:

Court of Appeals Case Number: 48474-9

Is this a Personal Restraint Petition? Yes ☐ No

The document being Filed is:

Designation of Clerk's Papers

Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: _____

Answer/Reply to Motion: _____

☒ Brief: Respondent's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: _____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Teresa L Bryant - Email: teri.bryant@lewiscountywa.gov

A copy of this document has been emailed to the following addresses:

kelder@tillerlaw.com

ptiller@tillerlaw.com